

Family Life and the Law: Under One Roof. Edited by REBECCA PROBERT. [Aldershot: Ashgate. 2007. ix, 258, (Bibliography) 23 and (Index) 3 pp. Hardback £60.00. ISBN 9780754647607.]

IN THIS CLEVERLY TITLED VOLUME, Rebecca Probert brings experts in legal fields outside the usual boundaries of family law “under one roof”, to explore the effect of each body of law on family life. The emphasis in each of the book’s relatively distinct parts is on the “intact family”. The aim is to introduce some of the “huge swathes” of law affecting families who still live together, law that receives scant attention in many family law courses. The first part concerns the housing of the family, dealing with the pioneering role of housing law in developing conceptions of familial ties, as well as the more specific issue of using the home as credit security.

Part II, “Using the Law in Intact Families”, opens with a chapter on the criminal law response to domestic violence. Rachael Mulheron’s contribution on secondary victims in liability for medical negligence probably wins the prize for the most original context in which to discuss the conception of close relationships. Meanwhile, Chris Barton’s chapter on the overall acceptability of intra-familial contracts will be of immense interest to those embroiled in the contemporary debate over pre-nuptial agreements and cohabitation contracts.

Part III’s focus is on the relationship between intact families and the state. Nick Wikeley and David Salter provide interesting overviews of the position of the family in the difficult areas of social security and tax law respectively. This is complemented with a chapter on the work-life balance, a crucial issue in family policy with more than a passing relevance to the controversy surrounding the generosity of ancillary relief awards. Finally, Ann Stewart discusses the increasingly important issue of caring for elderly family members, describing the current legal framework as “woefully inadequate”.

Part IV of the work considers the family in an international context, broadly defined. It opens with Judith Masson’s exploration of family relationships entered abroad, from “marriage tourism”, through the recognition of formalised same-sex partnerships, to the receipt of fertility services and inter-country adoption. The next two chapters deal with the precarious position of the family under immigration and asylum law respectively, and Clare McGlynn concludes the book with a contribution on the relatively well-worn topic of the EU’s impact on family law.

Unsurprisingly, one of the key themes to emerge is the inconsistency and arbitrariness caused by the different conceptions of the family between legal disciplines, as well as the vast differences in the relative importance of familial ties in general in each field. This issue is, of course, a familiar one. But the sheer number of discrete areas of the law discussed in relation to it will inevitably add useful fuel to the debate. The conciseness of each chapter and the well-integrated character of the book also enhance its utility.

The idea behind the book, as Probert freely admits, is not new. Graveson and Crane’s *A Century of Family Law* (London 1957) considered the effect of the general law on the family at a time when “family law” was not yet a term of art. However, Probert charts a shift in family law scholarship that began with the publication of the first edition of Bromley’s *Family Law* (London 1957) in the very same year, and mirrored the increase in family breakdown. Since then, the family lawyer’s main concern has been with the specific problems faced by fragmenting families rather than the legal position of those still intact. Probert wonders whether the balance has “tilted too far”, especially since areas such as tax and social security affect more families than nullity, assisted reproduction and even divorce. She cites Barton’s argument, made elsewhere, that the discipline should take a more positive approach and focus on functioning families. However, law as it is taught in universities is inherently pathological in that it tends to focus on the legal rules that apply when things go wrong, and family law is no different. Probert appears to accept this by acknowledging that no course could cover all the laws that might affect the family, and that legal scholarship has moved on. However, she does set out to “evoke” the older tradition, albeit in a more modern and socio-legal style, while admitting that she cannot emulate it.

Indeed, the inevitability of a pathological approach in academic family law in no sense detracts from the value of this book. The implicit hope is that those working within family law as currently conceived will at least take notice of its scholarship. In a literal sense, this has occurred with remarkable speed: Sonia Harris-Short and Joanna Miles make significant use of Wikeley and Salter’s contributions in their own chapter on “Family Property and Finances” in *Family Law: Text, Cases, and Materials* (Oxford 2007). Moreover, it must also be noted that consideration of the criminal law and the need for an integrated response in the area of domestic violence, both at the heart of Sharon Cowan and Jacqueline Hodgson’s chapter, are already included in mainstream family law textbooks.

Unlike Graveson and Crane, Probert does not devote much space to the future of her discipline in her own introductory contribution. However, drawing on McGlynn’s concerns about the prevalence of the traditional family in EU law combined with the drive towards harmonisation, she notes that the law may soon move back towards the conception of the family that prevailed in the time of her predecessors.

It would be a mistake to recommend this book to all but the keenest undergraduate family law students, since its remit is almost entirely off-syllabus by design. However, it is near-essential reading for anyone teaching or researching in the field. Such individuals, for example, will happily cite social security cases on the definition of cohabitation on their reading lists and in their publications. However, they may not be fully aware of the implications of that definition in the context in which it was formulated. The book is an invaluable tool in seeking to pin down the effect of the general law on family life and law, and vice versa.

The breadth of areas covered means that it would not be an easy read in one sitting, but efforts made in studying it over time will be well rewarded.

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